



Federal Communications Commission
Washington, D.C. 20554

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Ms. Caryn D. Moir
Vice President – Federal Regulatory
SBC Telecommunications, Inc.
1401 I Street, NW, Suite 400
Washington, DC 20005

RE: *SBC/Ameritech Merger Order*, CC Docket No. 98-141

Dear Ms. Moir:

This letter addresses SBC Telecommunications, Inc.'s (SBC) request not to implement the Texas-approved benchmark for one measure under the Carrier-to-Carrier Performance Plan (Performance Plan). Pursuant to the *SBC/Ameritech Merger Order*,¹ I conclude that SBC need not implement this benchmark for the remainder of 2002 for the purpose of payment calculation. Beginning January 1, 2003, however, SBC will be required to utilize the Texas benchmark for Performance Measurement 1 (PM1) in calculating any voluntary payments for the remainder of the merger condition period, absent further action by the Wireline Competition Bureau (Bureau).²

The Commission adopted the Performance Plan in the *SBC/Ameritech Merger Order*.³ The Performance Plan requires SBC to report performance measurements data to the Commission each month, and to make payments to the United States Treasury should it fail to meet certain performance standards. The Performance Plan requires SBC and the Wireline Competition Bureau (formerly the Common Carrier Bureau) to meet semi-annually to discuss additions, deletions, and modifications to the Performance Plan.⁴

The Performance Plan measurements are based on those adopted by the Public Utility Commission of Texas (Texas Commission) and the California Public Utilities Commission (California Commission). Specifically, for the SBC states except California and Nevada, SBC reports data based on 20 measurements adopted by the Texas Commission.⁵ For California and Nevada, SBC reports data based on 20 measurements adopted by the California Commission.⁶ Both Texas and California have their own on-going reviews to update the measurements, and the Performance Plan establishes a process by which

¹ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, Attachment A, para. 4 (1999) (*SBC/Ameritech Merger Order* or *Merger Order*).

² The Performance Plan lasts for three years from the date SBC was first potentially liable for payment (June 2000). See *Merger Order*, 14 FCC Rcd at 14858, para. 359.

³ See *Merger Order*, 14 FCC Rcd at 15040, App. C, Attach. A.

⁴ See *Merger Order*, 14 FCC Rcd at 15041, App. C, Attach. A, para. 4.

⁵ See *Merger Order*, 14 FCC Rcd at 15041, App. C, Attach. A, para. 4.

⁶ See *Merger Order*, 14 FCC Rcd at 15040, App. C, Attach. A, para. 3.

those changes can flow through to the federal Performance Plan counterpart measurements. In particular, when the underlying state commission makes changes, SBC must notify the Bureau immediately.⁷ SBC may implement those changes for the anchor state if the Bureau does not object within five days of notification.⁸ At the next semi-annual review, the Bureau may decide whether the same changes should be made for the other states tied to that state.⁹ For example, if the Texas Commission adopts changes to its measurements, SBC must notify the Bureau immediately. The Bureau would then have five days to object to the changes; if it does not, SBC may make the changes for the Texas data in the Performance Plan. At the next semi-annual review, the Bureau would decide whether SBC should also make the changes for the remaining Southwestern Bell states, the Ameritech states, and SNET.

Pursuant to the *Merger Order*, however, states for which SBC has received section 271 authority are removed from the Performance Plan.¹⁰ As a result, Texas data are no longer subject to the merger-related Performance Plan, even though Texas-approved changes could, if implemented, affect payment calculations for the SBC states that remain subject to the Plan (except California and Nevada).

On May 24, 2001, the Texas Commission adopted a number of changes to its Performance Plan, including a benchmark of returning 95 percent of Firm Order Confirmations (FOCs) for electronically submitted orders within 60 minutes (PM1).¹¹ In a letter dated November 21, 2001, SBC proposed to adopt different performance standards and exclusions for Ameritech Corp. (Ameritech) and Southern New England Telephone (SNET) service areas than the Texas Commission had adopted. In response, I concluded in a December 21, 2001 letter that while the Bureau would permit ministerial changes – such as changing company names and references to regional systems – tailoring performance standards and exclusions to each region or state would be inconsistent with the text and intent of the *Merger Conditions*.¹² Accordingly, I declined to adopt all of the modifications proposed by SBC.

Subsequently, SBC provided additional information regarding the applicability of the Texas-approved benchmark for the provision of FOCs to the Ameritech service area. Specifically, in discussions with Commission staff, SBC provided additional information relating to the adoption of a different benchmark in the course of collaboratives in the Ameritech region, and regarding the capabilities of its operations support systems (OSS) in that region.

SBC states that while the Texas Commission has promulgated a 60-minute benchmark, competitive LECs in the Ameritech region have agreed to a 120-minute benchmark for the Ameritech service region in state collaboratives.¹³ Indeed, every state in the Ameritech service region has adopted a 120-minute

⁷ See *Merger Order*, 14 FCC Rcd at 15041, App. C, Attach. A, para. 4.

⁸ See *Merger Order*, 14 FCC Rcd at 15041, App. C, Attach. A, para. 4.

⁹ See *Merger Order*, 14 FCC Rcd at 15041, App. C, Attach. A, para. 4.

¹⁰ See *Merger Order*, 14 FCC Rcd at 15000, App. C, para. 24.

¹¹ We note that the 60-minute benchmark is stricter than the previous standards for electronically submitted orders. For example, the benchmark for electronically submitted orders via LEX or EDI for both Simple Residence and Business LLP Only and with Loop (1-19) was 5 hours. *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, App. C at Attach. A-2a.

¹² Letter from Carol E. Matthey, Deputy Chief, Common Carrier Bureau, to Caryn Moir, Vice President, Federal Regulatory, SBC at 3-4 (Dec. 21, 2001)(SBC Dec. 21 Letter).

¹³ See, e.g., Indiana Regulatory Commission, *Petition of Indiana Bell Telephone Company, Incorporated, D/B/A Ameritech Indiana Pursuant to I.C. 8-21-61 for a Three-Phase For Commission Review of Various Submissions of Ameritech Indiana to Show Compliance With Section 271c of the Telecommunications Act of 1996*, Cause No. 41657 at 18) (approving the 120-minute benchmark through a collaborative process); Illinois Commerce

benchmark for this measure.¹⁴ SBC claims that, given the support of competitive LECs in the Ameritech service area, the 120-minute benchmark is an appropriate measure of whether it provides FOCs on a nondiscriminatory basis.

Moreover, SBC states that its back end OSS in the Ameritech service area are completely different than those supporting SWBT. SBC asserts that although it is implementing system upgrades in the Ameritech service area that should be able to perform at a level similar to that achieved by the SWBT systems, the Ameritech service area systems are currently unable to satisfy the 60-minute benchmark for FOC timeliness.

I conclude, based on the unique circumstances presented here, that it would be appropriate to defer implementation of the 60-minute benchmark in the Performance Plan for the remainder of the 2002 calendar year.¹⁵ In reaching this decision, I am particularly swayed by the commercial acceptance by competitive LECs in the Ameritech states of the 120-minute benchmark and SBC's commitment to meet the 120-minute benchmark in the Ameritech region.¹⁶ While the merger conditions were designed to bring the benefits of "best practices" adopted by the Texas Commission throughout the SBC region, I am persuaded to make a limited exception in this instance because SBC has reached agreement with its wholesale customers through the collaborative process in the Ameritech states on this issue.

Moreover, I recognize that SBC's ability to meet the shorter 60-minute benchmark depends, in part, on how quickly its wholesale customers migrate to the newly updated OSS in the Ameritech region. SBC states that it successfully completed its implementation of a uniform and enhanced OSS Plan of Record for Ameritech on April 24, 2002.¹⁷ I understand, however, that SBC maintains an older version of

Commission, *SBC/Ameritech Illinois Merger*, Docket 98-0555, Performance Benchmark Collaborative, Condition 30, Draft Meeting Minutes (demonstrating competitive LEC acceptance of the 120-minute benchmark in a collaborative process); The Public Utilities Commission of Ohio, *Investigation Into Ameritech Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, Case No. 00-942-TP-COI at paras. 1-51 (Dec. 20, 2001) (approving the 120-minute benchmark through a collaborative process); Michigan Public Service Commission, *Ameritech Michigan's submission on performance measures, reporting and benchmarks, pursuant to the October 2, 1998 order in Case No. U-11654*, Order Amending Prior Orders, Case No. U-11830, (adopted Feb. 22, 2001) at 3 (approving a joint motion that included the 120-minute benchmark); Public Service Commission of Wisconsin, *Investigation Into Ameritech Wisconsin Operational Support Systems*, Interlocutory Order, No. 670-TI-160 at 1 (rel. Dec. 15, 2000) (approving the 120-minute benchmark).

¹⁴ See Indiana Regulatory Commission, *Petition of Indiana Bell Telephone Company, Incorporated, D/B/A Ameritech Indiana Pursuant to I.C. 8-21-61 for a Three-Phase For Commission Review of Various Submissions of Ameritech Indiana to Show Compliance With Section 271c of the Telecommunications Act of 1996*, Cause No. 41657 at 18); Illinois Commerce Commission, *Illinois Bell Telephone Company Petition for waiver pursuant to Condition (30) of the SBC/Ameritech Merger Order*, Order, 00-0238 at 4, 6; The Public Utilities Commission of Ohio, *Investigation Into Ameritech Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, Case No. 00-942-TP-COI at para. 51 (Dec. 20, 2001); Michigan Public Service Commission, *Ameritech Michigan's submission on performance measures, reporting and benchmarks, pursuant to the October 2, 1998 order in Case No. U-11654*, Order Amending Prior Orders, Case No. U-11830 at 3 (adopted Feb. 22, 2001); Public Service Commission of Wisconsin, *Investigation Into Ameritech Wisconsin Operational Support Systems*, Interlocutory Order, No. 670-TI-160, (rel. Dec. 15, 2000) at 1.

¹⁵ We note that SBC only requests that the Bureau exempt the Ameritech service area from the Texas-approved benchmark and not the SNET service area. Accordingly, our decisions herein do not apply to SNET.

¹⁶ Letter from Caryn D. Moir, Vice President, Federal Regulatory, SBC to Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 98-141 at 1 (filed June 5, 2002).

¹⁷ Letter from Caryn D. Moir, Vice President, Federal Regulatory, SBC to Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 98-141 at 1-2 (filed April 26, 2002).

software even after releasing a subsequent version of such software so that two versions are available to wholesale customers ("versioning"). As a consequence, even though SBC has recently upgraded its OSS capabilities, that will not necessarily result in improved performance for FOC timeliness if wholesale customers continue to use the older OSS. Over time, however, I would expect that SBC will increasingly become capable of achieving the Texas-adopted benchmark as CLECs migrate to the upgraded OSS. In light of the foregoing, I conclude that SBC will not be required to utilize the 60-minute benchmark for PM1 in calculating any voluntary payments in the Ameritech service area for the remainder of 2002. Instead, SBC should measure its performance in the Ameritech region using the 120-minute benchmark for PM1 and calculate any payments accordingly. Beginning January 1, 2003, SBC must utilize the Texas-approved standard in calculating payments under the Performance Plan, absent further action by the Bureau.

If SBC disagrees with any of this letter's guidance, it may file an application for review with the Commission pursuant to section 1.115 of the Commission's rules.¹⁸

I appreciate the opportunity to have further discussions with SBC regarding the implementation of the FOC benchmark. Please do not hesitate to contact me if I can be of further assistance. In addition, you may contact Bill Dever, Assistant Division Chief, Competition Policy Division in the Wireline Competition Bureau at (202) 418-1578.

Sincerely,

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

CC: Al Syeles, SBC
David Cartwright, SBC

¹⁸ 47 C.F.R. § 1.115.